

***UPCOMING AMENDMENTS TO THE FEDERAL RULES  
OF BANKRUPTCY PROCEDURE TO BE EFFECTIVE  
ON DECEMBER 1, 2000 (INFORMATIONAL)***

**Prepared by**

**David S. Kennedy  
Chief United States Bankruptcy Judge  
Western District of Tennessee**

**October 19, 2000**

# UPCOMING AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE TO BE EFFECTIVE ON DECEMBER 1, 2000

---

## INTRODUCTION

On April 17, 2000, the Supreme Court of the United States ordered that the Federal Rules of Bankruptcy Procedure 1017, 2002(a), 4003, 4004, and 5003 be amended. The Chief Justice, pursuant to the Rules Enabling Act, 28 U.S.C. § 2075,<sup>1</sup> transmitted the amendments to the Congress. These amendments will become effective on December 1, 2000, absent action by the Congress, and shall govern in all proceedings in bankruptcy cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

## SUMMARY OF UPCOMING AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

Federal Rules of Bankruptcy Procedure 1017, 2002(a), 4003, 4004, and 5003 were amended by the Supreme Court as follows:

**FED. R. BANKR. P. 1017(e)(1)** - This amendment allows the court to grant a timely request filed by the United States trustee (or Bankruptcy Administrator) seeking an extension of time to file a motion to dismiss a chapter 7 case under the substantial abuse provisions of section 707(b) of the Code, whether the court rules on the request before or after the expiration of the 60-day period.

---

<sup>1</sup>28 U.S.C. § 2075, entitled *Bankruptcy rules*, provides as follows:

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11.

Such rules shall not abridge, enlarge, or modify any substantive right.

The Supreme Court shall transmit to Congress not later than May 1 of the year in which a rule prescribed under this section is to become effective a copy of the proposed rule. The rule shall take effect no earlier than December 1 of the year in which it is transmitted to Congress unless otherwise provided by law.

**FED. R. BANKR. P. 2002(a)(6)** - This amendment increases the dollar amount from \$500 to \$1,000. In the event the request for compensation or reimbursement of expenses does not exceed \$1,000, notice of a hearing will not have to be sent to all creditors and parties in interest. If a particular applicant has filed prior requests or received compensation or reimbursement of expenses at an earlier time in the case, the amounts previously requested or awarded are not to be considered when determining whether the present application exceeds \$1,000 for the purposes of applying this Rule.

**FED. R. BANKR. P. 4003(b)** - This amendment allows the court to grant a timely request for an extension of time to file objections to the list of claimed exemptions, whether the court rules on the request before or after the expiration of the 30-day period. The amendment clarifies that the extension may be granted only for cause. The Rule will be extended to apply to an objection filed by any party in interest and is not limited to objections filed by a trustee or creditor, which conforms the Rule to section 522(l) of the Code. The purpose of this amendment is to avoid the harshness of the present rule which has been construed by some courts to deprive a bankruptcy court of jurisdiction to grant a timely request for an extension of time if it has failed to rule on the request within the 30-day period. See, for example, *In re Laurain*, 113 F.3d 595 (6<sup>th</sup> Cir. 1997); *In re Stoulig*, 45 F.3d 957 (5<sup>th</sup> Cir. 1995); *In re Brayshaw*, 912 F.2d 1255 (10<sup>th</sup> Cir. 1990).

**FED. R. BANKR. P. 4004(c)(1)** - This amendment delays the granting of a chapter 7 discharge while a motion requesting an extension of time to file a motion to dismiss the case for a substantial abuse under section 707(b) of the Code is pending. The other amendments to this Rule are stylistic.

**FED. R. BANKR. P. 5003** - This amendment adds a new subdivision (e) permitting the United States or the state or territory in which the court is located to file a statement designating a safe harbor mailing address for notice purposes. The clerk is required to maintain a public "register" of such addresses. However, the use of an address that differs from the address

included in the register does not invalidate any notice that is otherwise effective under applicable law.

The Advisory Committee note accompanying new subdivision (e) states that:

The register may include a separate mailing address for each department, agency, or instrumentality of the United States or the state or territory. This rule does not require that addresses of municipalities or other local governmental units be included in the register, but the clerk may include them.

Although it is important for the register to be kept current, debtors, their attorneys, and other parties should be able to rely on mailing addresses listed in the register without the need to continuously inquire as to new or amended addresses. Therefore, the clerk must update the register, but only once each year.

To avoid unnecessary cost and burden on the clerk and to keep the register a reasonable length, the clerk is not required to include more than one mailing address for a particular agency, department, or instrumentality of the United States or the state or territory. But if more than one address is included, the clerk is required to include information so that a person using the register could determine when each address should be used. In any event, the inclusion of more than one address for a particular department, agency, or instrumentality does not impose on a person sending a notice the duty to send it to more than one address.

---

## **CONCLUSION**

It is not believed that any of the foregoing amendments are controversial. Accordingly, it is anticipated that these amendments will become effective on December 1, 2000, pursuant to the Rules Enabling Act, without action by the Congress.<sup>2</sup>

---

<sup>2</sup>*Id.*